



Setti D. Warren  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date: January 11, 2011  
Land Use Action Date: March 22, 2011  
Board of Aldermen Action Date: April 4, 2011  
90-Day Expiration Date: April 5, 2011

DATE: January 7, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning <sup>ET</sup>  
Derek Valentine, Senior Planner

SUBJECT: **Petition #350-10** PR REALTY TRUST, PEGGI ROBART, TRUSTEE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and to EXTEND A NONCONFORMING USE to expand an existing two-family dwelling into a three-family dwelling; to waive one parking space; and to waive the required driveway width of 12 feet at 175 ALLERTON ROAD, Ward 6, on land known as SBL 52, 24,6, containing 8,530 square feet of land in a district zoned SINGLE RESIDENCE 2, REF: Section 30-24, 30-23, 30-21(a)(2)(b), 30-21(b), 30-19(d)(2), (g)(3) and (m) of the City of Newton Revised Zoning Ordinance, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



## **EXECUTIVE SUMMARY**

The site at 175 Allerton Road consists of roughly 8,531 square feet of land in the Single Residence 2 district in Newton Highlands. The site is considered an “old lot”, improved with a dwelling that has been a two-family since at least 1931. Records from this time indicate that two distinct families, as well as a real estate office occupied the property. In the early 1950s, the neighborhood was rezoned from a multi-family residence district to a single-family residence district, thus making several existing two-family residences (the petitioner’s included) legally nonconforming. The structure on the subject property currently has three dwelling units, including the third unit, which was converted from its prior use as a real estate office sometime after 1931. The petitioner would like to legalize the property as a three-family. The petitioners are not proposing any changes to the structure, but are requesting a waiver for one required parking stall and a waiver of the required minimum driveway width. The property is already well screened from the street as well as from the surrounding properties. As a result of this screening and the minimal changes occurring on site, the impact on the neighborhood is not expected to be significant.

### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When hearing this request, the Board should consider whether:

- The proposed three-family use is not substantially more detrimental to the neighborhood than the existing, legally nonconforming two-family use.
- A waiver of one required parking stall is appropriate since literal compliance with parking requirements is impractical due to the size and shape of the lot and the position of the existing residence and garage on the lot.
- Literal compliance with driveway width requirements is not practical due to its location between the existing structure and the property line.
- The removal of existing pavement and the reduction of impervious surface will help to improve the quality of water resources as recommended by the *Newton Comprehensive Plan*.
- The proposal is consistent with the *Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.

### **II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

#### **A. Neighborhood and Zoning**

The property is located on Allerton Road between Hyde Street and Cushing Street in Newton Highlands. The property backs up to the MBTA Green Line. The petitioner’s lot, at 8,530 square feet, is fairly typical of what can be found in the

neighborhood. Parcels in the neighborhood range from 6,000 square feet to nearly 20,000 square feet, but the average is around 10,000 square feet, which is the minimum lot size in the Single Residence 2 district. The area around the subject property is predominantly in the Single Residence 2 district, although there is a large area in the Single Residence 1 district located just west of the site. The current land use of the area is a mix of single family and multi-family residential. A locus plan (***“ATTACHMENT D”***) is attached illustrating the mix of types of residential uses in the area.

B. Site

The site consists of an 8,530 square foot lot improved with a legally nonconforming two-family residence being used as a three-family residence as well as a detached two-car garage and an existing bituminous parking area with six parking stalls.



Existing Driveway



Existing Detached Garage

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is proposing to convert a legally nonconforming two-family residence into a three-family residence by obtaining a Special Permit. The property has been used as a three-family since at least the 1940s, although the petitioner has not provided any proof that this has been a legal use. The petitioner seeks to legalize this condition without making any modifications to the structure.

B. Building and Site Design

There are no changes proposed to the building at this time. The third unit is already in place and has been used as a dwelling unit for decades. The building is consistent with other 19<sup>th</sup> century homes in the neighborhood. Site changes are related to parking and circulation issues and are discussed in the next section.

C. Parking and Circulation

The petitioner is proposing to remove some of the existing bituminous pavement in the rear of the residence, reducing the impervious coverage of the site and

eliminating two spaces that are difficult to access because the detached two-car garage blocks their egress. The parking space closest to the residence will also be removed reducing the total number of parking spaces on site from eight to five, two of which will be located in the garage. The driveway, which is 9.3' (where 12' is required for two-way travel), will not change as a result of this petition. This existing drive is located between the structure and the eastern property line and, therefore, cannot be widened.

**The Planning Department recommends that the petitioner consider maintaining the parking space closest to the residence (now slated for removal) and removing the parking space closest to the garage instead. The parking space closest to the garage does not have any end-of-the-aisle maneuvering space and it could be difficult for a vehicle to back out and exit from this stall.**

D. Landscape Screening

The property is almost fully enclosed on the east and west sides by a vinyl stockade fence and shrubbery. The rear of the property abuts the MBTA and is also screened by a stockade fence. The parking and egress for the apartments is not visible from Allerton Road.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated October 14, 2010 (*SEE ATTACHMENT "A"*), provides an analysis of the proposal with regard to zoning. The existing structure is legally nonconforming with regard to lot size, frontage, and open space. A two-family use is nonconforming in a single-family residential district. While no changes are proposed that will affect lot size or frontage, the petitioner is proposing the removal of some pavement in the backyard, which will make the property more conforming with regard to required open space. The amount of open space provided on-site will increase from 34% to 44.3% in a district where 50% open space is required. The site work will result in a reduction of three parking spaces. The petitioners are seeking a waiver for one required parking space. The petitioners are also seeking a waiver for the minimum driveway width of 12'.
- B. Comprehensive Plan. This petition helps to preserve the existing housing stock while increasing the diversity of housing options available in the City. The proposal will legalize what has been a third rental unit for decades.
- C. Newton Historical Commission Demolition Review. Since the petitioner proposes no exterior changes and the property is not in a designated historic district, no review is required.

D. Engineering Review: Since there is actually a decrease in impervious coverage, review by the Engineering Department is not required.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioners are seeking the following approvals for relief:

- Sections 30-21(a)(2)(b) and 30-21(b), to expand an existing legally nonconforming two-family use to a three-unit multi-family use
- Sections 30-19(d)(2) and 30-19(m), to waive one required parking space
- Sections 30-19(g)(3) and 30-19(m), to allow a 9.3 foot access driveway where 12 feet is required

VI. PETITIONERS' RESPONSIBILITIES

The petition is complete at this time.

**ATTACHMENTS**

**ATTACHMENT A:** ZONING REVIEW MEMORANDUM DATED OCTOBER 14, 2010

**ATTACHMENT B:** ZONING MAP

**ATTACHMENT C:** LAND USE MAP

**ATTACHMENT D:** LOCUS PLAN

**ATTACHMENT E:** DRAFT BOARD ORDER

## ATTACHMENT A

### ***Zoning Review Memorandum***

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Date: October 14, 2010

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

Cc: Terrence Morris, Attorney Representing Applicant  
Candace Havens, Interim Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to expand an existing legal nonconforming two-family dwelling into a three-family dwelling in a Single Residence zone**

<b>Applicant: PR Realty Trust, Peggi Robart, Trustee</b>	
<b>Site:</b> 175 Allerton Road	<b>SBL:</b> 52024 0006
<b>Zoning:</b> SR2	<b>Lot Area:</b> 8,530 square feet
<b>Current use:</b> Two-Family Dwelling	<b>Proposed use:</b> Multifamily Dwelling

#### **Background:**

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The petitioner seeks to replace an existing nonconforming structure (a two family dwelling) with another nonconforming structure (a three family dwelling).

The following review is based on plans and materials submitted to date as noted below.

Plans and materials reviewed:

- Revised site plan, Frank Iebba, Land Surveyor, dated 10/19/10
- Site plan prepared by Essex Engineering & Survey, Frank Iebba, Land Surveyor
  - Topographic site plan, showing existing/proposed conditions, dated 8/27/10
  - Locus plan dated 8/31/10
- Floor plans, unsigned, dated 8/31/10
  - Owner's basement unit
  - First floor plan
  - Second floor plan
- Deeds from 1942 to present
- Notarized statement from former owner, Winslow Robart, stating the existence of a third unit in 1942 through 1983
- The Newton Directory 1931 Listings for 175 Allerton Road
- Zoning Summary Table

#### **Administrative determinations:**

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1. The subject property is a legally nonconforming two-family dwelling in the SR2 zone. The applicant seeks to add a third unit, expanding their nonconformity,

and making it a multifamily use. To add the third unit the applicant must obtain a Special Permit from the Board of Aldermen under §30-21(a)(2)(b) and §30-21(b).

2. The property is in the SR2 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below).

<b>SR2 Zone</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot size	10,000 square feet	<b>8,530 feet</b>	<b>No Change</b>
Frontage	80 feet	<b>55.1 feet</b>	<b>No Change</b>
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear</li> </ul>	25 feet 7.5 feet 15 feet	30 feet 9.1 feet 63 feet	No Change No Change No Change
FAR	0.3	Not provided*	No Change
Building Height	30 feet	25.9 feet	No Change
Maximum Stories	2.5	2	No Change
Max. Lot Coverage	30%	24%	No Change
Min. Open Space	50%	<b>34%</b>	<b>44.3%</b>

\* The applicant is not proposing any changes to the structure so FAR will not change.

3. Section §30-19(d)(2) requires two parking stalls per dwelling unit, in this case amounting to six required off street parking stalls. The applicant's proposed site plan shows five parking spaces, three outdoor stalls and two stalls in an existing garage. In achieving this new parking stall arrangement the applicant proposes to remove some existing parking areas thus increasing lot open space. A special permit from the Board of Aldermen under §30-19(m) is required to waive one parking stall.
4. Section 30-19(g)(3) requires a parking facility of five or fewer parking stalls to have a minimum of 12 feet for access drives. The existing driveway is 9.3 feet wide at its narrowest. As the parking facility is being substantially altered, a special permit from the Board of Aldermen under §30-19(m) is required to construct the parking facility as proposed.
5. See "Zoning Relief Summary" below:

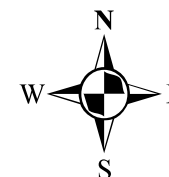
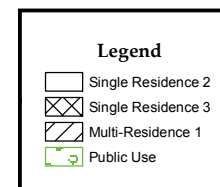
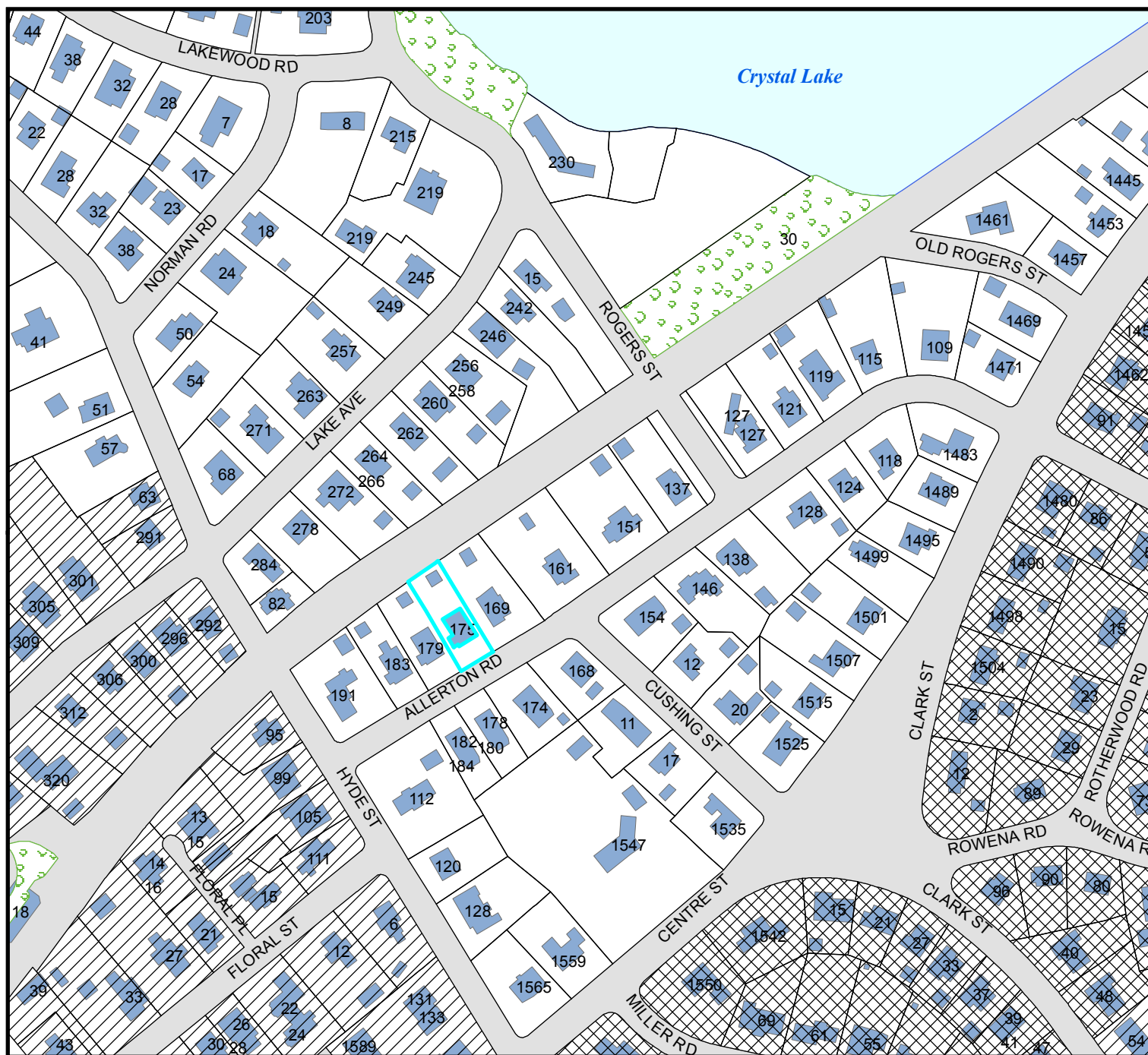
<b>Zoning Relief Summary</b>		
<b>Ordinance</b>	<b>Site</b>	<b>Action Required</b>
§30-21(a)(2)(b), §30-21(b)	Expand an existing legally nonconforming two family use to a three unit multifamily use	S.P. per §30-24
<b>Ordinance</b>	<b>Parking</b>	<b>Action Required</b>
§30-19(d)(2), §30-19(m)	Waive one required parking space	S.P. per §30-24
§30-19(g)(3), §30-19(m)	Allow a 9.3 foot access driveway, where 12 feet is required.	S.P. per §30-24



# ATTACHMENT B

## 175 Allerton Road Zoning

*City of Newton,  
Massachusetts*



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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GIS Administrator - Douglas Greenfield

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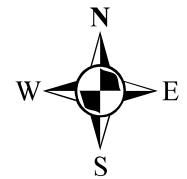
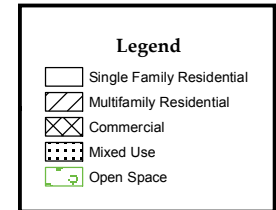
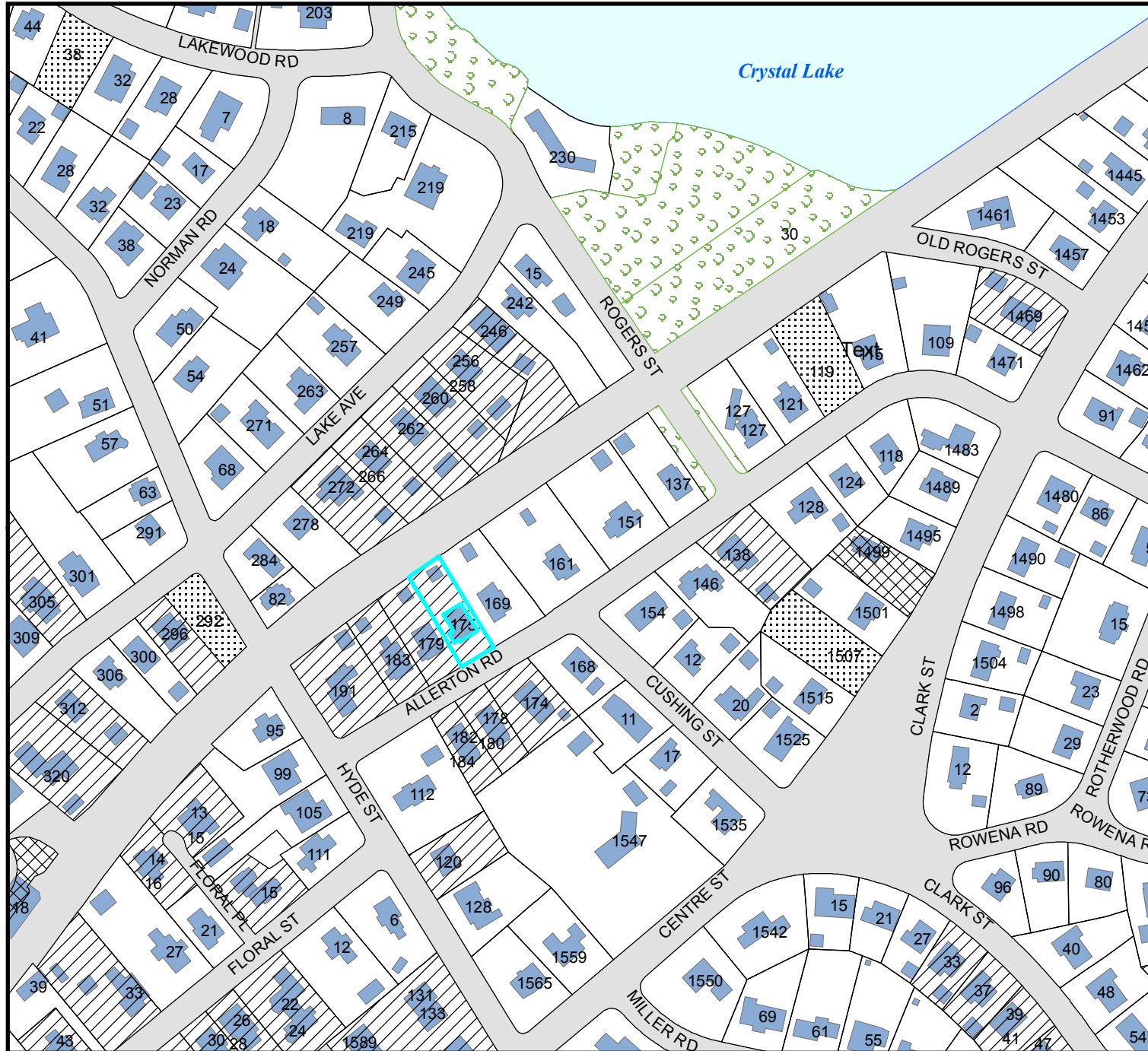
**MAP DATE: January 06, 2011**



# ATTACHMENT C

## 175 Allerton Road Land Use

*City of Newton,  
Massachusetts*



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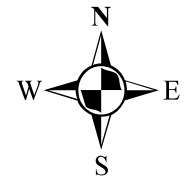
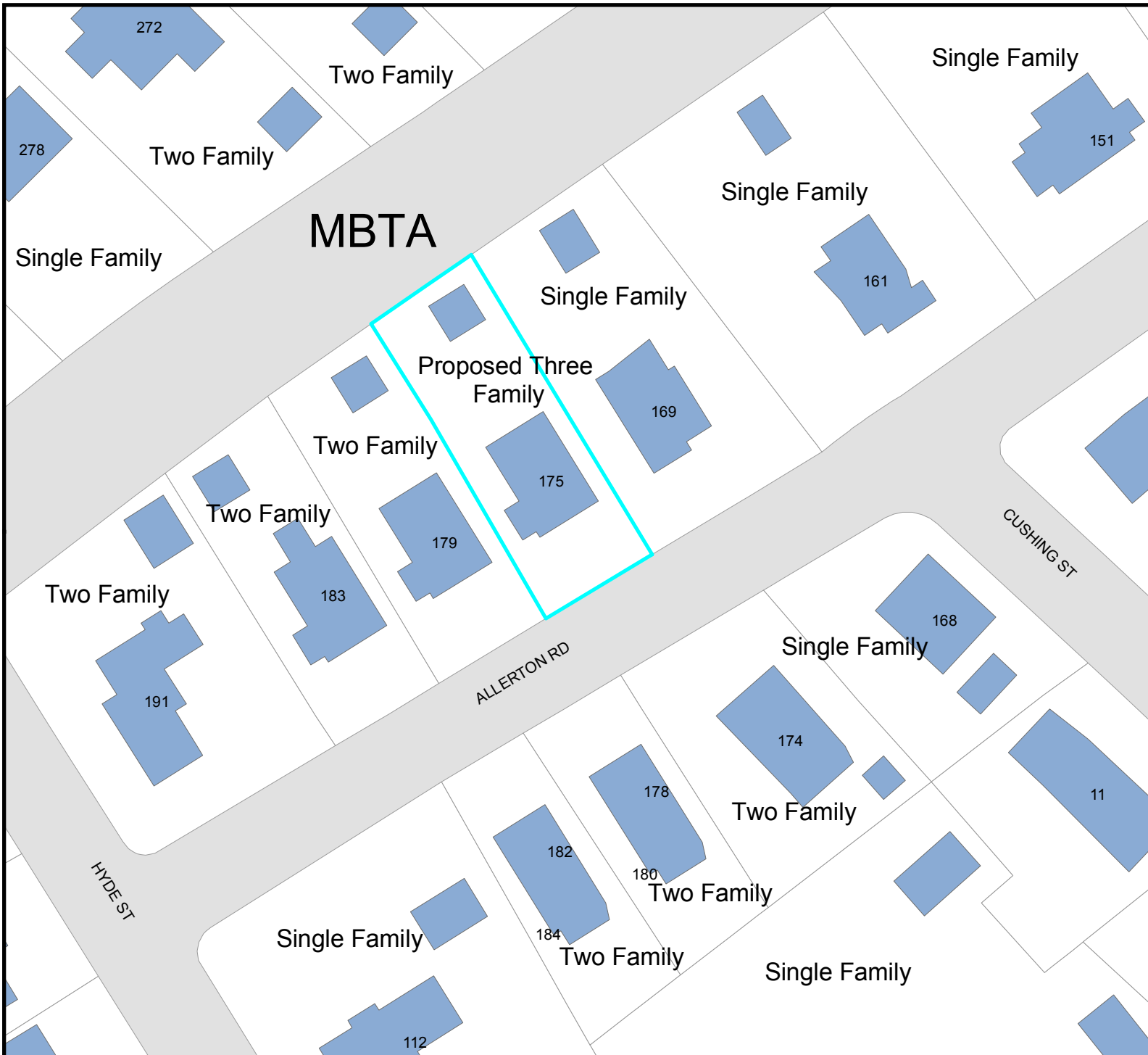
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MAP DATE: January 06, 2011

# ATTACHMENT D

## Residential Locus Map

*City of Newton,  
Massachusetts*



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GIS Administrator - Douglas Greenfield

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**MAP DATE: January 06, 2011**

## ATTACHMENT E

**DRAFT**  
#350-10

### CITY OF NEWTON IN BOARD OF ALDERMEN

January 11, 2011

#### ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NONCONFORMING USE to change an existing two-family dwelling into a three-family dwelling; to waive one required parking space; and to waive the required driveway width of 12 feet in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan:

The Board finds that:

1. The proposed three-family is not substantially more detrimental to the neighborhood than the existing two-family use.
2. A waiver for one required parking stall is appropriate since literal compliance with parking requirements is impractical due to the size and shape of the lot and the position of the structures on the lot.
3. Literal compliance with driveway width requirements is not practical due to the driveway's location between the existing structure and the property line.
4. The removal of some of the existing pavement and the reduction in impervious surface will help improve the quality of water resources in accordance with the Newton Comprehensive Plan.
5. The proposal is consistent with the Newton Comprehensive Plan, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.

PETITION NUMBER: #350-10

PETITIONER: PR Realty Trust, Peggi Robart, Trustee

LOCATION: 175 Allerton Road, Ward 6, on land known as Sec 52, Blk 24,  
Lot 6, containing approx. 8,530 sf of land

OWNER: PR Realty Trust, Peggi Robart, Trustee

ADDRESS OF OWNER: 175 Allerton Road, Newton, MA

TO BE USED FOR: Three-Family residence

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Sections 30-21(a)(2)(b) and 30-21(b), to change an existing legally nonconforming two-family use to a three-unit multifamily use, Sections 30-19(d)(2) and 30-19(m), to waive one required parking space, Sections 30-19(g)(3) and 30-19(m), to allow a 9.3 foot access driveway where 12 feet is required.

ZONING: Single Residence 2 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features shall be located and constructed consistent with the following plans as noted:
  - o “Site Plan, 175 Allerton Road, dated August 27, 2010 and revised October 19, 2010, signed and stamped by Frank Iebba, Professional Land Surveyor.
2. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
  - a. recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL/EXTENSION OF A NONCONFORMING USE.
  - b. filed a certified copy of such recorded notices with the Clerk of the Board, the Inspectional Services Department and the Department of Planning and Development.
3. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
  - a. filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered engineer certifying compliance with Condition #1.

- b. filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development certifying compliance with Condition #1.